

BOARD OF ADJUSTMENT REPORT



Meeting Date: 4/3/2019
Item No.: 3

ACTION

Sonders Residence Variance 2-BA-2019

Request to consider the following:

1. Approve a request st by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.204.E.1.c. and Section 7.200.A.2. pertaining to accessory buildings in the required front yard for a property with Single-family Residential (R1-35) zoning, located at 7655 E. Cactus Road.

OWNER

Robert Sonders
(720) 530-0567

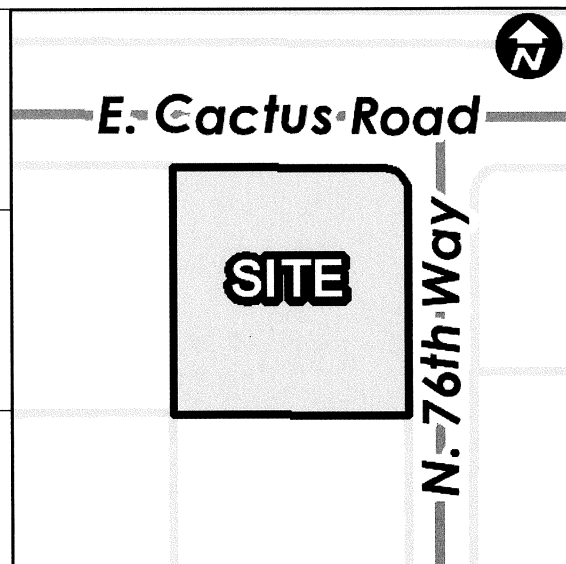
APPLICANT CONTACT

Robert Sonders
(720) 530-0567

LOCATION

7655 E Cactus Rd

BACKGROUND



History

The subject site was annexed into the City of Scottsdale in 1962 through Ordinance No.165 and the City of Scottsdale R1-35 zoning was applied. In 1969, the original main residence and site walls appear on historical aerials, and the County Assessor's records identify the house having been constructed in 1961. This property is Lot 9 in the Desert Star Acres Unit 1 subdivision plat which went through the Maricopa County plat process and was recorded in January of 1960.

Prior permits issued for this property occurred in 2014 and 2015 respectively for a residential remodel and a new swimming pool to the backyard. A fence permit was also issued in 2018 as part of variance case 2-BA-2018. The approval of that previous variance case also brought the entirety of the existing lot into conformance.

Zoning/Development Context

The subject site is zoned Single-family Residential (R1-35) and is located at the southwest corner of N. 76th Way and E. Cactus Road, Lot 9 in the Desert Star Acres Unit 01 subdivision.

Adjacent Uses and Zoning

- North: Buenavante subdivision, zoned Single-family Residential (R1-35 PCD); existing single-family residence.
- South: Desert Star Acres Unit 01 subdivision, zoned Single-family Residential (R1-35); existing single-family residence.
- East: Desert Star Acres Unit 01 subdivision, zoned Single-family Residential (R1-35); existing single-family residence.
- West: Desert Star Acres Unit 01 subdivision, zoned Single-family Residential (R1-35); existing single-family residences.

Zoning Ordinance Requirements

Variance #1: Pursuant to Section 5.204.E.1.c of the City of Scottsdale Zoning Ordinance, pertaining to accessory structures within a front yard:

On a corner lot, the required front yard of forty (40) feet shall be provided on each street. **No accessory buildings shall be constructed in a front yard.** Exception: On a corner lot which does not abut a key lot or an alley adjacent to a key lot, accessory buildings may be constructed in the yard facing the side street.

The applicant is requesting a variance from the provision requiring accessory structures be constructed outside the required front yard. His preliminary site plan indicates the intent to construct a new structure twenty-eight (28) feet from the front (northern) property line.

Variance #2: Pursuant to Section 7.200.A.2 of the City of Scottsdale Zoning Ordinance, pertaining to accessory structures within a front yard:

No accessory building shall be permitted in a required front or side yard.

The applicant is requesting a variance from the provision requiring accessory structures be constructed outside the required front yard. His preliminary site plan indicates he

intends to construct a new structure twenty-eight (28) feet from the front (northern) property line.

Code Enforcement Activity

There has been no recent code enforcement activity at the subject site.

Community Input

City of Scottsdale hearing postcards were sent to properties within 750 feet of the subject site. Staff has received verbal information inquiries regarding the variance requests and how they can express their concerns. Staff informed the concerned citizen to attend the Board of Adjustment meeting to voice their opinion/concerns. As of the writing of this report, staff has not received any written comments regarding this application.

Discussion

The applicant wishes to construct a detached garage within the required forty (40) foot front yard setback along E. Cactus Road, to allow maneuverability for a fifth-wheel camper. Previously a 25-foot wide Future Roadway Easement existed along the northern boundary of the property, which was abandoned by case 12-AB-2016. The result of that abandonment was the dedication of a 1-foot wide Vehicular Non-Access Easement (VNAE), a 4-foot wide Water and Sewer Facilities Easement, and a 10-foot wide Public Non-Motorized Access Easement along Cactus Road. Because of the VNAE, the only permitted access is off of 76th Way.

Other properties along Cactus Road have proceeded with wall height variance requests along Cactus Road and have achieved approval, such as the property at 12180 N 76th Ct through case 8-BA-1996, but a property at 12056 N 74th Place was denied a variance request (14-BA-1996). Additionally, previous wall height variance cases have been approved along Cactus Road west of Scottsdale Road (15-BA-2006 and 14-BA-2006). The subject property has also recently received a variance for wall height in a required front yard along Cactus Road (case 2-BA-2018). Although this current request does not pertain directly to wall height in a required front yard, the existing pattern of development, through these other approved walls, potentially reduces the visual impact of the proposed structure.

An additional area of consideration is the prevalence of both “key lot” and standard lot layouts along this corridor, which dictates where accessory structures can be placed along Cactus Road.

A key lot is defined in the Zoning Ordinance as: *a lot adjacent to a corner lot having its side lot line in common with the rear lot line of the corner lot and facing on the street which forms the side boundary of the corner lot.* The general premise is to ensure that front yard setbacks are reasonably congruent across a corridor of parcels, despite which front is the legal (i.e. shorter) front.

As referenced in the above code sections, *“On a corner lot which **does not abut a key lot** or an alley adjacent to a key lot, accessory buildings may be constructed in the yard facing the side street.”* A related January 21, 2005 staff interpretation allows lots not abutting a key lot to place accessory structures in the longer front, provided the structures adhere to the required side yard requirement (15 feet in R1-35), subject to that interpretation’s details. Though this does not directly apply to the subject lot, it does indicate the opportunity for some nearby lots along Cactus to place accessory structures as close as 15 feet to Cactus Road.

VARIANCE CRITERIA ANALYSIS

- 1. That because of special circumstances applicable to the property including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district:**

The Applicant States:

The front yard setback, for the referenced property, could technically be represented as a side yard configuration because all access for the residence is situated from a 76th Way. All Cactus Road access points are no longer used and are scheduled for removal and sidewalk replacement by the City of Scottsdale at some point in the future, per the City’s discretion. A previous 25ft roadway easement has been officially abandoned. (ABN. 17/0746118). Also, a previous variance, for a 6-foot wall height along Cactus Road was granted (case numbers 2-BA-2018, 156-PA-2018).

The current variance request is to allow for a 28-foot setback in lieu of a 40-foot setback, measured starting from the north property line to the south. If the variance is granted, this will allow for an outbuilding to be placed at the northwest quadrant of the property. Placing the building here will allow a 5th wheel camper to be maneuvered properly, by backing up, into a future outbuilding/garage. The angle of the driveway and the existing house (built in 1961) has created a scenario whereby it would not be possible to park a 5th wheel in an outbuilding situated anywhere else on the property. Seeking the variance first, will then determine the proper garage building construction project plan and will be submitted to the City at the correct time. A 28-foot setback will align correctly with the wall gate to the north. Both the RV gate and the man gate were placed in this location due to the residence’s buried water line and gas line respectively. Unfortunately, the location of these utilities was not in the best interest of the property and unfortunately the location of these utilities dictated wall placement. Additionally, the configuration of the residence structure location on the property, with the access now from 76th Way, would require the

these utilities was not in the best interest of the property and unfortunately the location of these utilities dictated wall placement. Additionally, the configuration of the residence structure location on the property, with the access now from 76th Way, would require the setback variance, to properly maneuver a 5th Wheel into a garage. The 28-foot variance request will only need to be granted within the defined block wall fence footprint, leaving the north east corner of the property at the corner of Cactus Road and 76th Way, outside of the block wall fence, remaining at the 40-foot setback requirement.

Staff Analysis:

The subject property is similar in lot size and topography compared to the other R1-35 zoned properties in the area. The subject property is located at the southwest corner of N. 76th Way and E. Cactus Road. This lot is rectangular and is of similar size and configuration of the surrounding lots. The shorter frontage of this lot faces E. Cactus Road which is defined as the primary frontage based on the *yard, front* definition from section 3.100 of the zoning ordinance. This lot is also a corner lot, requiring a forty (40) foot setback along both street frontages. This lot is not adjacent to a key lot to the south. The plat for this lot and surrounding lots in the same subdivision were recorded with Maricopa county in 1960, and later annexed into the city in 1962.

Contextually there are six (6) foot tall walls along E. Cactus Road, with their specific placements relative to the configuration of each property and/or previous variance approvals, however there don't appear to be any accessory structures within 40 feet of the right of way in the immediate vicinity. Nevertheless, some of those properties could place a structure as close as 15 feet to the right of way.

- 2. That the authorization of the variance is necessary for the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, and does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located:**

The Applicant States:

Both to the west and to the east, directly on Cactus Road, there are many other residence locations that have set precedence in the area with regards to the 40-foot setback modification request. Additional private residences, within the southern interior of the neighborhood, also contain property structures that reside within the 40-foot setback. These property owners enjoy the fulfillment of their respective properties by utilizing their property within reason. This variance is simply asking for the same privileges and rights as

existing homeowners in the area. The requested variance will help squelch some of the additional noise that is directly related from the increased traffic on Cactus Road once the outbuilding has been constructed.

Staff Analysis:

The R1-35 zoning district allows for primary use as a single-family residence. Regardless of the outcome of this variance request, the existing structure can continue to function as a single-family residence. The originally constructed location and orientation of the house treats the N. 76th Way frontage as the primary frontage for access to the home, which conflicts with the orientation defined by the Zoning Ordinance.

Because of the orientation of some lots along this stretch of Cactus Road, where those lots' "legal front" is not actually on Cactus Road, accessory structures in the rear yard need only adhere to the required side yard setback along Cactus Road. Though this provision (Ord Sec. 5.204.E.1.c) doesn't directly apply to the Sonders residence, it demonstrates that the proposed accessory structure location does not significantly deviate from what some lots in the area can already do.

While this may not be special in terms of what some other lots in this zoning district are allowed to do situationally, it may be distinct among those in this district with a similar lot orientation (i.e., having their legal front along Cactus Road).

3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:

The Applicant States:

The requested variance was not self-imposed. The original property was built in the year 1961. The alignment of the property on the lot was also not self-imposed. The alignment of the residence's utilities was also not self-imposed. The previous widening of Cactus Road, many years ago, did directly encroach onto the property. Allowing traffic noise to be closer to the residence. In fact, the removal of the driveway access directly to Cactus Road has increased the public traffic safety in the area. Access for the residence, inclusive of RV entering and exiting is now exclusively from 76th Way. Previous RV access was removed from Cactus Road by the Roadway Easement abandonment, although the concrete drive approach in the City right of way plans to remain. However, they are to be removed by the City at a future date. Access from 76th Way, with an RV, is substantially

safer to vehicle traffic on Cactus Road as the previous RV entrance, from Cactus Road, was a traffic safety hazard.

Staff Analysis:

The plat this subdivision was recorded with Maricopa County in 1960, and later annexed into the city approximately in 1962. In 1969, the original main residence and site walls appear on historical aerials, and the County Assessor's records identify the house having been constructed in 1961.

One of the results of the associated abandonment case, 12-AB-2016, was the dedication of a 1-foot wide Vehicular Non-Access Easement along Cactus Road. This easement terminates the historical driveway access onto E. Cactus Road in line with the goals of the City's Design Standards and Policies Manual and the Transportation Master Plan. The primary existing access to the property is provided by N. 76th Way. Other options also exist for accessory structure locations that meet the setbacks.

4. **That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general:**

The Applicant States:

At no point is the requested setback variance a determinant to the persons residing or working in the area. The variance request would only be granted and utilized behind a block wall fence. The future garage will be constructed with the same color and style of other existing residences which will enhance the overall area.

Staff Analysis:

The intent of the required setbacks along street frontages is to create an open residential character, to establish view corridors, and to maintain uninterrupted visual continuity with adjacent lot setbacks for main buildings. Contextually there are six (6) foot tall walls along E. Cactus Road, along with significant landscape screening.

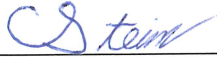
Staff has received one citizen inquiry from a concerned property owner. The applicant's site plan shows his proposed garage tentatively planned inside the existing walled front yard. The proposed garage location does not conflict with the city's standards for vehicle sight visibility at the intersection.

The original intent of the forty (40) front and corner street yard setback was to create an open character along residential streets. Cactus Road now has a major arterial classification and not a local residential classification. The applicant has existing oleander landscaping along the sidewalk of the north boundary of the property and other homeowners along Cactus Road also have existing walls and tall landscaping located adjacent to the roadway. The wide right-of-way appears to allow ample visibility while traveling along Cactus Road. A more relevant visibility issue would be turning onto Cactus Road from side streets, including 76th Way, but the visibility is most impacted by tall perimeter walls, trees, and landscaping screening. The proposed location of an accessory structure behind those existing screening elements likely won't significantly compound the issue.

SUMMARY

Based on the facts presented by the applicant, the evidence would support a finding that the property may not have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, topography or configuration of the property is not unequivocally unique and applicable. However, the applicant's proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood. However, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing.

APPROVED BY



Casey Steinke, Report Author
480-312-2611 csteinke@scottsdaleaz.gov

3-18-19

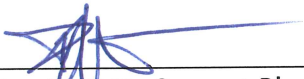
Date



Brad Carr, AICP, Board of Adjustment Liaison
480-312-7713, bcarr@scottsdaleaz.gov

3-18-2019

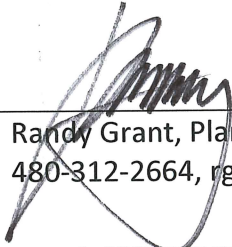
Date



Tim Curtis, AICP, Current Planning Director
480-312-4210, tcurtis@scottsdaleaz.gov

3/18/2019

Date



Randy Grant, Planning and Development Director
480-312-2664, rgrant@scottsdaleaz.gov

3/20/19

Date

ATTACHMENTS

1. Project Description & Justification
2. Context Aerial
3. Aerial Close-Up
4. Zoning Map
5. Proposed Site Plan

Type of variance requested, sections(s) of the Zoning Ordinance to be varied:

Owner response:

28-foot side yard setback variance in lieu of a 40-foot setback.

1. *That because of special circumstances applicable to the property including its size, shape, topography, location or surroundings, the strict application of the zoning ordinance will deprive such property of the privileges enjoyed by the other property of the same classification in the same zoning district:*

Owner response:

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Owner response:

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simply asking for the same privileges and rights as existing homeowners in the area. The requested variance will help squelch some of the additional noise that is directly related from the increased traffic on Cactus Road once the outbuilding has been constructed.

3. *That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:*

Owner response:

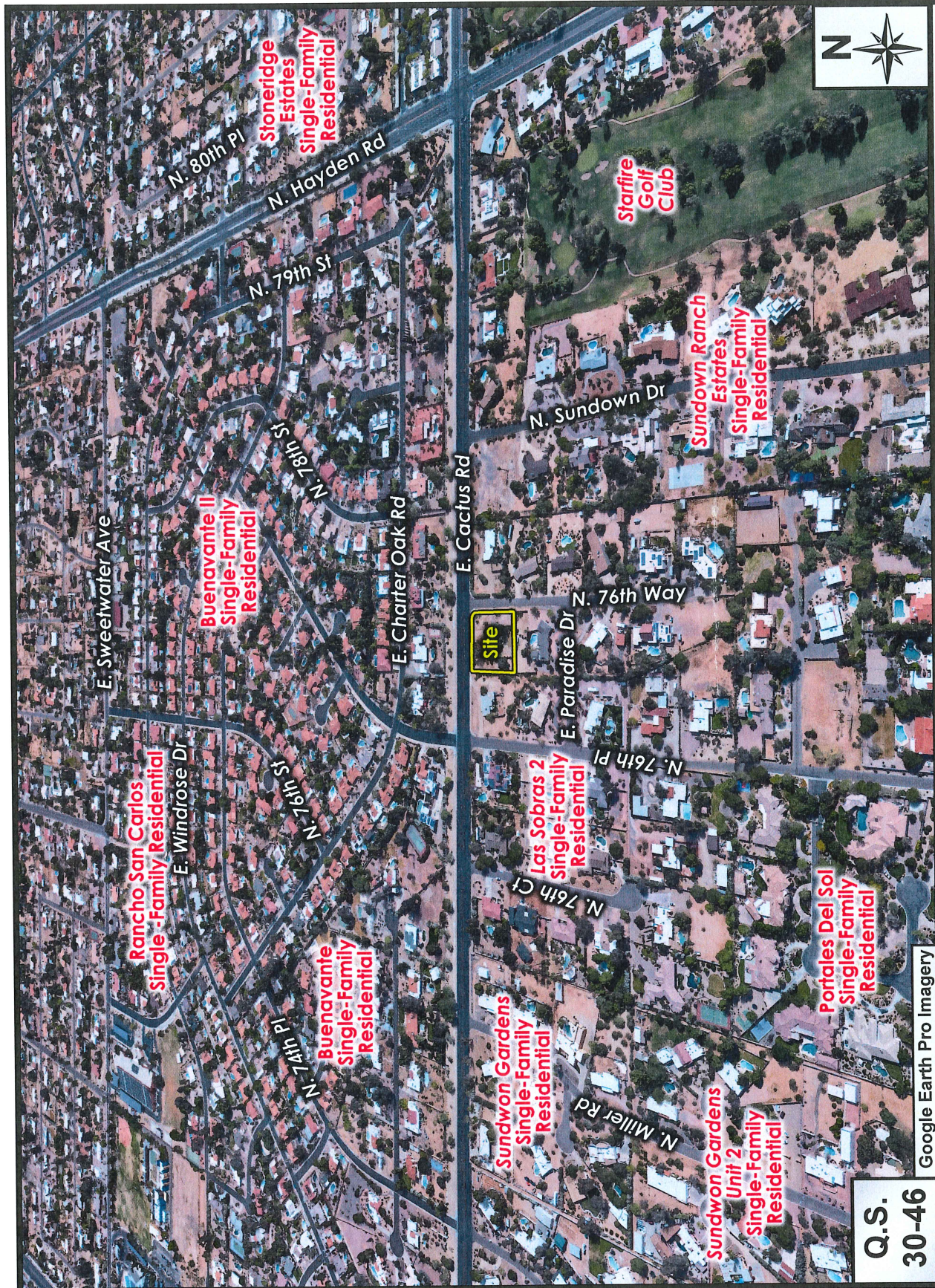
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4. *That authorization of the variance will not be materially detrimental to the persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general:*

Owner response:

At no point is the requested setback variance request a determinant to the persons residing or working in the area. The variance request would only be granted and utilized behind a block wall fence. The future garage will be constructed with the same color and style of other existing residence. Which will enhance the overall area.

Robert F and Leslie E Sonders
7655 East Cactus Rd. Scottsdale AZ 85260
rob@sonders.com
720.530.0567
Thank you,
Robert F. Sonders

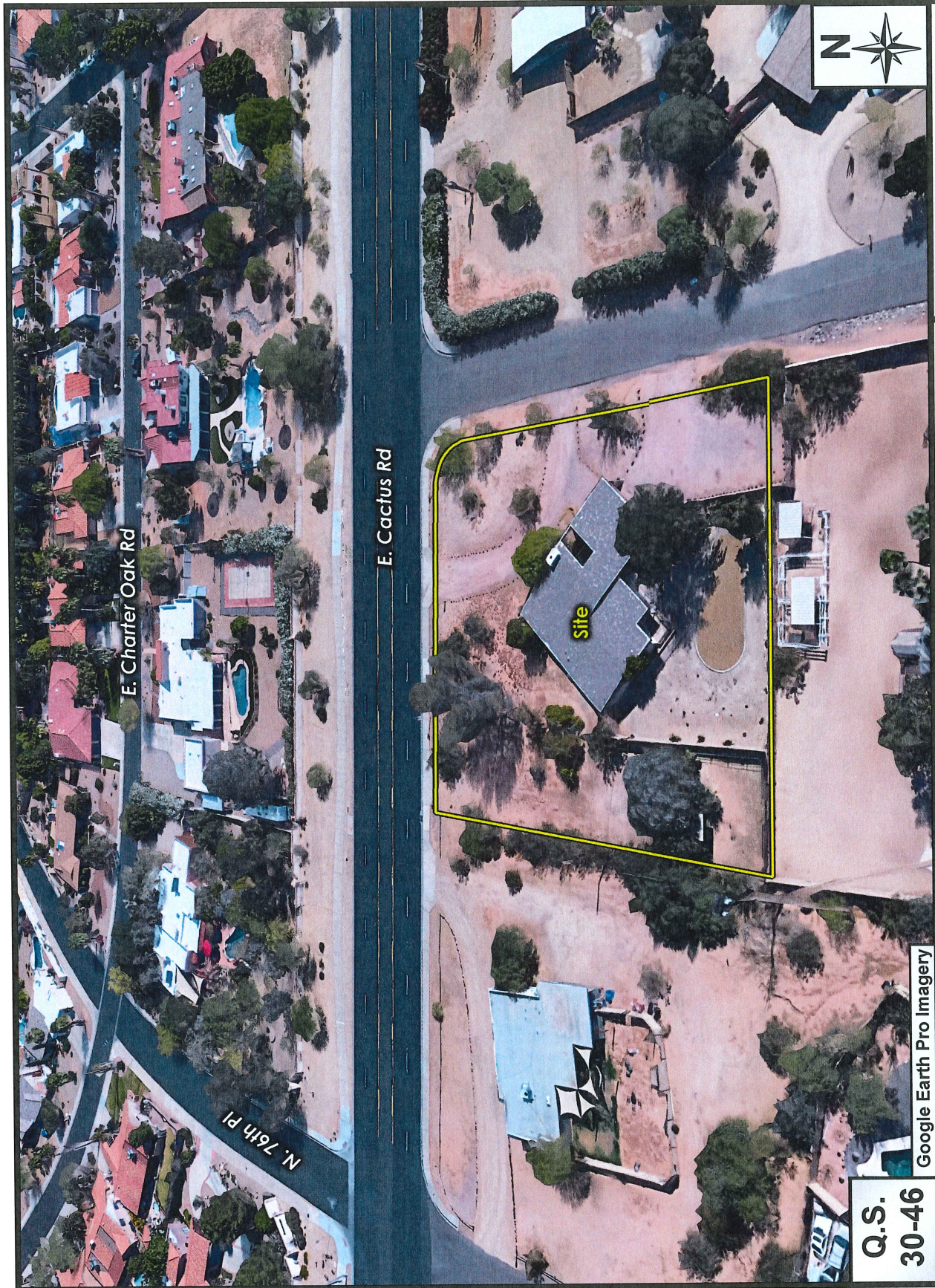


2-BA-2019

Context Aerial

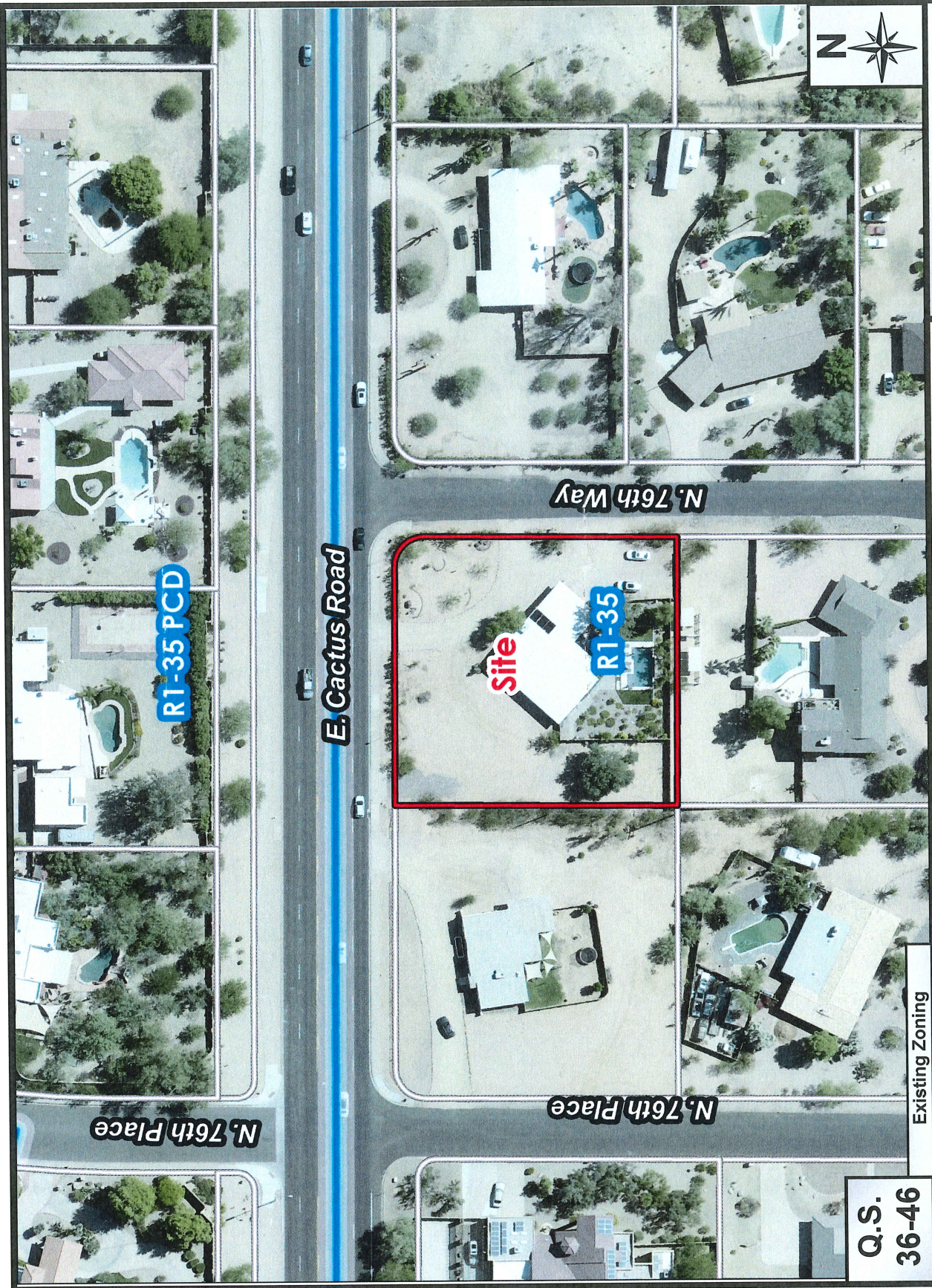
Google Earth Pro Imagery

Q.S.
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2-BA-2019

Aerial Close-Up



2-BA-2019

Zoning Map

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Existing Zoning

